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# Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Argentina

## Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, on her visit to Argentina from 14 to 21 November 2016. The Special Rapporteur examines the gaps and challenges faced by Argentina in fulfilling the State obligation to eliminate violence against women, its causes and consequences, and recommends measures for preventing and combating violence against women in the country.

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# Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Argentina*

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* Circulated in language of submission and in Spanish only.

# I. Introduction

1. At the invitation of the Government, the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, visited Argentina from 14 to 21 November 2016.

2. During her eight-day mission, the Special Rapporteur visited the autonomous city of Buenos Aires and the Provinces of Buenos Aires, Tucumán and Corrientes. She met with the President and representatives of the National Women's Council, the Minister of Foreign Affairs, representatives of the Ministries of Health, Education, Social Development and Security, the National Audit Office, the Office of the Under-Secretary for Social Development, the Office of the Prison System Ombudsman, the Office of the Under-Secretary for Relations with the Judiciary, the Office of the Under-Secretary for Prison Management, the Domestic Violence Office of the Supreme Court of Justice, the Public Prosecution Office of the Nation, the Secretariat of the National Council for Bioethics and Human Rights, the Public Defence Office of the Nation and the Public Defence Office of the City of Buenos Aires. She also met with the following: the Under-Secretary for Gender and Diversity and representatives of the provincial Public Defence Office in the Province of Buenos Aires; the Mayor of San Miguel de Tucumán, representatives of the Observatory on Violence against Women and the Working Group on Gender-based Violence in the Province of Tucumán; and the National Council for Women and representatives of 30 municipal departments for women in the Province of Corrientes.

3. The Special Rapporteur also met with representatives of the Office of the National Ombudsman and held consultations with over 100 non-governmental organizations (NGOs), representatives of academic institutions in Buenos Aires, Tucumán and Corrientes Provinces and United Nations officials.

4. The Special Rapporteur expresses her gratitude to the Government for its excellent cooperation and to the civil society organizations, academics and other stakeholders for their valuable input. She would like to thank in particular the women and girls who shared with her their personal stories, placing their trust and some of their hopes in her hands. She would also like to thank the United Nations country team, the Resident Coordinator — who personally supported the Men for Equality network — and the Human Rights Adviser for the assistance extended prior to and during the mission.

# II. General context

5. Argentina is a federal State with a complex structure and a division of competencies among the federal Government, 23 provinces and the autonomous city of Buenos Aires, which have their own constitutions, laws and executive, legislative and judicial authorities. The governance of certain areas relating to gender equality and violence against women, in particular health, education and large sectors of criminal law, are within the jurisdiction of the provinces and the autonomous city of Buenos Aires. The complex government structure and division of competencies result in particular challenges in implementing State obligations under international human rights instruments on women's rights and violence against women, such as the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará).

6. The federal structure results also in different levels of government being responsible for different aspects of women's rights and in a large variety of protocols on the enjoyment of those rights and mechanisms for their implementation. As such, victims are faced with a *real institutional maze* when trying to seek protection and free themselves from situations of violence.

7. Virtually all stakeholders with whom the Special Rapporteur met referred to the strong prevalence of a "machismo" culture, which permeates the entire society and creates an environment of tolerance with regard to violence against women. Entrenched patriarchal attitudes and gender stereotypes coupled with a lack of uniform incorporation and

implementation of international and national standards in this area have resulted in violence against women, especially domestic violence, being treated as a private matter rather than as a public concern.

# III. Manifestations of violence against women, its causes and consequences

## A. Femicides or gender-related killings of women

8. The Ni Una Menos movement attracted national and world attention to the femicide situation in Argentina, and the Government of Argentina made important strides in addressing and collecting data on femicide.

9. Article 80 of the Criminal Code was amended in 2012[1] to include femicide as a separate category of aggravated homicide. It provides for life imprisonment for a perpetrator who kills his ascendant or descendant relative, spouse or former spouse or person with whom he has or has had an intimate relationship, even if they were not living together at the time of the crime.

10. In 2015, the first National Femicide Registry was established by the Women's Office of the Supreme Court of Justice. The registry collects data on the number and ages of and the relationship between victims and accused, the number of minor dependents of the victim and whether previous complaints of violence had been made against the accused. According to its data, there were 225 femicides in 2014[2] and 235 in 2015, 70 per cent of which were family related.[3] Such data are crucial for preventing family-related or femicides committed by an intimate partner. In 2014, 228 persons were charged with femicide, of which 27 were convicted — a very low conviction rate.[4]

11. The Special Rapporteur noted that the above femicide data included only cases for which judicial proceedings had been initiated and left out a significant number of other cases, such as when the perpetrator committed suicide. Other sources pointed to a higher number of femicides. According to non-governmental sources, there were 277 femicides in 2014 and 286 in 2015.[5] The Special Rapporteur also noted that there were no data on redress provided to victims.

12. Article 80 (4) and (11) of the Criminal Code provides for the crime of femicide on the basis of gender, sexual orientation, gender identity or expression or when perpetrated as gender violence as aggravated homicide. However, the Special Rapporteur received reports that the judicial system had shown strong resistance to enforcing those provisions and that prosecutions and sentences for such crimes were extremely rare.[6] It was estimated that transgender people in Argentina had a life expectancy of 35 years.[7] A survey conducted in 2012 by the National Institute for Statistics and Censuses indicated that 83 per cent of transgender persons and transvestites surveyed had suffered serious violence and discrimination by the police.[8] In September and October 2015, three transgender women, leaders and activists in lesbian, gay, bisexual, transgender and intersex organizations, were

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[1] Argentina, Criminal Code, Law No. 11.179 of 21 December 1984, last amended 19 December 2012. Available at www.wipo.int/wipolex/en/details.jsp?id=12934.

[2] Argentina, Supreme Court of Justice of the Nation, *Registro Nacional de Femicidios de la Justicia Argentina, 2014*. Available at http://old.csjn.gov.ar/om/docs/femicidios_2014.pdf.

[3] Argentina, Supreme Court of Justice of the Nation, *Registro Nacional de Femicidios de la Justicia Argentina, 2015*. Available at www.csjn.gov.ar/om/docs/femicidios_2015.pdf.

[4] Argentina, Supreme Court of Justice of the Nation, *Registro Nacional de Femicidios de la Justicia Argentina, 2014*.

[5] La Casa del Encuentro, *"Femicidios"*. *Available at* www.lacasadelencuentro.org/femicidios.html.

[6] Akahatá and others, "Situación de los derechos humanos de las personas travestis y trans en la Argentina" (October 2016), p. 11. *Available at* http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ARG/INT_CEDAW_NGO_ARG_25486_S.pdf.

[7] Ibid., p. 2.

[8] Ibid., p. 5.

murdered.[9] By the end of 2015, no one had been charged with their deaths.[10] In 2013, the Trans Murder Monitoring Project reported that 19 transgender people had been murdered.[11]

13. The Special Rapporteur received information that the deaths of many women had been preceded by failures in the prevention system, such as inaction when urgent protection was requested, fragmented recording of incidents of domestic violence, the use of reconciliation mechanisms between victims and aggressors, inefficient enforcement and monitoring of the protection measures granted, lack of thoroughness in collecting and evaluating evidence, the presence of stereotypes or minimizing the seriousness of the facts.[12]

14. The Special Rapporteur welcomed the initiative of the Office of the National Ombudsman to establish a femicide observatory, as she had recommended in September 2016,[13] to collect and publish data on femicide and to analyse cases of femicide in order to determine failures or gaps in protection with a view to improving legislation or its implementation. Considering the initiatives taken by several NGOs and the Government to collect and analyse femicide data, the Special Rapporteur encourages all of them to cooperate and harmonize the collection of data and analysis of cases.

## B. Violence against women, including domestic violence

15. The Special Rapporteur was concerned that there were no nationwide statistics on violence against women and domestic violence in Argentina. The Domestic Violence Office indicated that, in 2015, it had received 11,348 reports of domestic violence, 65 per cent of which involved women victims and 14 per cent, girl victims.[14] However, those numbers probably represented only a fraction of the actual amount of cases. According to non-governmental sources, 55.8 per cent of the female population in Buenos Aires had been subjected to psychological violence, 22.3 per cent to physical violence and 15 per cent to sexual violence by an intimate partner during their lifetime.[15] However, only 1 out of 10 victims had turned to a public institution to seek help.[16]

16. The Domestic Violence Office stated that, of the 11,348 cases registered in 2015, 99 per cent had been referred to the civil justice system and 74 per cent to the criminal justice system. No data were available on how many of those proceedings had resulted in prosecutions and convictions. According to the Women's Office, charges had been brought against 236 people in respect of the 235 femicides registered in 2015 but, by the end of 2015, there had only been 7 convictions, while 29 per cent of the cases were at the trial stage, 51 per cent remained at the investigation stage, 14 per cent had been terminated for procedural reasons and there were no acquittals.[17]

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[9] Amnesty International, "Argentina must investigate horrific wave of attacks against trans activists" (14 October 2015). Available at https://www.amnesty.org/en/latest/news/2015/10/argentina-must-investigate-horrific-wave-of-attacks-against-trans-activists/.

[10] Amnesty International, "Argentina 2016/2017". Available at https://www.amnesty.org/en/countries/americas/argentina/report-argentina/.

[11] Organization for Economic Cooperation and Development (OECD), "Social Institutions and Gender Index: Argentina". Available at www.genderindex.org/sites/default/files/datasheets/AR.pdf.

[12] Argentina, Public Defence Office of the Nation and Amnesty International, "Femicidio y Debida Diligencia: Estándares internacionales y practicas locales" (2015). Available at www.mpd.gov.ar/pdf/publicaciones/biblioteca/Libro%20 femicidio%20Final%20con%20tapa%20e%20isbn.pdf.

[13] See A/71/398, para. 82 (c).

[14] Argentina, Supreme Court of Justice of the Nation, *Registro Nacional de Femicidios de la Justicia Argentina, 2015*.

[15] Latin American Justice and Gender Team, "Las cifras de la violencia" (Buenos Aires). Available from www.ela.org.ar/a2/index.cfm?fuseaction=MUESTRA&codcontenido=2463&plcontampl=6&aplicacion=app187&cnl=14&opc=9.

[16] Ibid.

[17] Argentina, Supreme Court of Justice of the Nation, *Registro Nacional de Femicidios de la Justicia Argentina, 2015*, pp. 7-8.

17. Problems identified by victims and stakeholders[18] in addressing domestic violence included lack of support for victims who denounced their aggressors (although many were told not to go home after submitting their report); insufficient free legal aid services; weak enforcement of protective measures under Law No. 26.485 on comprehensive protection to prevent, punish and eradicate violence against women in the settings where they conduct their interpersonal relationships (hereafter the Law on violence against women); the use of standard approaches, which did not accurately evaluate the particularities of each situation; the conduct of hearings in civil courts, where both denouncers and aggressors had to appear without any protection for the alleged victims from direct encounter; the lack of specialization of some interdisciplinary teams; fragmentation between civil and criminal justice and the lack of gender expertise on the part of judges; the lack of adequate measures adapted for women in terms of age, gender identity, sexual orientation, geographic location or ethnicity; and the lack of shelters, which made it difficult for victims to leave the house of the aggressor.

## C. Sexual violence, including rape

18. Rape, including spousal rape, is a crime in Argentina. Under article 119 of the Criminal Code, the act of sexually abusing a person of either sex who is under 13 years of age, or when the act involves violence, threats, coercive or intimidating abuse of a relationship of dependence, authority or power, or when advantage is taken of the fact that the victim, for whatever reason, is unable to consent freely to the act, is punishable by imprisonment of six months to four years.[19] The Special Rapporteur was concerned that the article set the minimum age of consent at only 13 years and that the definition of rape was not based directly on lack of consent, but rather on use of force. She was also concerned that nationwide statistics on rape were not available and that there were no disaggregated data on rape of indigenous women and women with disabilities, or on rape and hate crimes against lesbian, gay, bisexual, transgender and intersex persons, or on investigations, prosecutions and convictions of perpetrators of such crimes and redress provided to victims.

19. The statute of limitation had been removed for sex crimes committed against children under 14 years of age. However, recently developed international standards in that area require States to ensure that the statute of limitation for initiating legal proceedings with regard to rape and other sexual violence allows for the initiation of proceedings after the victim has reached the age of majority (i.e., 18 years of age).

20. The Special Rapporteur received reports that the attitude of the police, hospital employees and judges towards survivors of sexual violence sometimes revictimized them.[20]

## D. Sexual harassment

21. The Special Rapporteur heard numerous reports that women often experienced discriminatory, aggressive and/or violent conduct, such as verbal abuse, touching and indecent assault in public spaces. Such incidents reportedly occurred every day and restricted women's autonomy and rights, but they were generally neither recognized nor perceived as crimes and therefore were not always reported, much less punished. There were no statistics to enable the dimensions of this problem to be gauged nationally.[21]

22. Sexual harassment in the workplace was a widespread phenomenon, but it was widely accepted as normal and few complaints had been made.

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[18] Argentina, Public Defence Office of the Nation, *Acceso a la justicia para mujeres víctimas de violencia en sus relaciones interpersonales* (2015). Available at www.mpd.gov.ar/pdf/publicaciones/biblioteca/Informe%20G%C3%A9nero%202015%20con%20tapa%20e%20isbn.pdf.

[19] Argentina, Criminal Code, Law No. 11.179 of 21 December 1984, last amended 19 December 2012.

[20] United States of America, Department of State, "Argentina 2015 human rights report". Available at www.state.gov/documents/organization/253197.pdf.

[21] In an informal online survey of the *Ni Una Menos* movement, 97 per cent of the women reported that they had been subjected to some form of sexual harassment over the past 12 months.

## E. Sexual education, legal abortion, early pregnancy and maternal mortality

23. Law No. 26.150 (2006) established the National Programme for Comprehensive Sex Education and stipulates that all students have the right to receive comprehensive sexual education in all public and private educational institutions. However, reportedly, there has been a persistent lack of resources since the law was enacted and its implementation has faced resistance from families and teachers. In addition, the law has not been implemented in several provinces. [22] The unavailability of comprehensive sexual education has constituted an obstacle for women and girls to enjoy, on a basis of equality, the rights to decide freely and responsibly on the number and spacing of their children and to have access to information, education and the means to enable them to exercise those rights, as provided for under article 16 (e) of the Convention on the Elimination of All Forms of Discrimination against Women.

24. Abortion is criminalized under article 85 of the Criminal Code.[23] Both the person performing the abortion and the woman who causes her own abortion or gives her consent for the abortion to be performed may be sanctioned. However, article 86 provides that an abortion performed by a qualified medical doctor with the consent of the pregnant woman is not punishable if it is done in order to avoid danger to the life or health of the mother and if the danger cannot be avoided by other means; or if the pregnancy is a result of rape or assault to a woman with a mental disability or mental illness, and her legal representative consents to the abortion. The general criminalization of abortion, with certain unclear and narrowly defined exceptions, coupled with the practice of medical practitioners of seeking judicial authorization before performing an abortion, rendered abortions unavailable, even under the exceptions.

25. The Supreme Court of Argentina, in a landmark ruling on 13 March 2012,[24] stated that prior judicial authorization was not necessary for an abortion to be performed in cases of rape and that provincial governments should ensure access to legal abortions in such cases. Based on that ruling, in June 2015, the Ministry of Health issued the "Protocol for the comprehensive care of persons with the right to the legal interruption of pregnancy".[25] However, to date, only 8 of the 24 provincial jurisdictions had issued protocols on non-punishable abortions.[26] In October 2015, the Office of the Ombudsman issued resolution No. 65/15[27] recommending that the provincial health authorities issue protocols compliant with the national protocol.

26. The absence of protocols in the majority of the provinces, coupled with the frequent refusal of doctors to perform abortions based on conscientious objection, resulted in a high number of unsafe abortions and contributed to high maternal mortality in Argentina.[28] According to some estimates, half a million illegal abortions took place every year in Argentina, representing about 40 per cent of all pregnancies.[29] The Special Rapporteur

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[22] Notably, the Province of Corrientes declared itself the "pro-life province" in 2015 and is not implementing the federal law.

[23] Argentina, Criminal Code, Law No. 11.179 of 21 December 1984, last amended 19 December 2012.

[24] See Argentina, Supreme Court of Justice, *F., A. L. s/ medida autosatisfactiva*, decision adopted on 13 March 2012.

[25] Argentina, Ministry of Health, *Protocolo para la atención integral de las personas con derecho a la interrupción legal del embarazo*. Available at http://despenalizacion.org.ar/pdf/publicaciones/ProtocoloANP2015.pdf.

[26] According to the Office of the National Ombudsman, eight provinces have fully complied with the Supreme Court ruling; eight have complied partially; and eight do not have protocols, namely, Catamarca, Corrientes, Formosa, Mendoza, San Juan, San Luis, Santiago del Estero and Tucumán.

[27] Argentina, Office of the National Ombudsman, resolution DPN No. 65/15 of 5 October 2015. Available at www.dpn.gob.ar/documentos/20160927_30933_556933.pdf.

[28] Silvina Ramos and others, "A comprehensive assessment of maternal deaths in Argentina: translating multicentre collaborative research into action", *Bulletin of the World Health Organization*, vol. 85, No. 8 (August 2007). Available at www.who.int/bulletin/volumes/85/8/06-032334/en/.

[29] Human Rights Watch, "Abortion: Argentina". Available at https://www.hrw.org/legacy/women/abortion/argentina.html.

received reports of women who had miscarried and sought help in public hospitals and who had been reported to the police as having undergone illegal abortions and subsequently faced criminal prosecution.[30] Such legislation prevents women from seeking necessary medical care and assistance and contributes to maternal mortality.

27. The Special Rapporteur was informed that a draft law on voluntary interruption of pregnancy had been submitted to the House of Representatives.

28. Many women and girls had difficulties accessing reproductive health services, including contraception and voluntary sterilization, which might potentially lead to unwanted or life-threatening pregnancies.[31] The public health system should, by law, provide free contraceptives, but the Special Rapporteur received reports that women and girls, in particular those in poor areas, were often unaware of the possibility of obtaining free contraceptives and that contraceptives were not always available.[32]

29. The Special Rapporteur was concerned that, every year, over the past five years, more than 3,000 girls under the age of 15 had given birth in Argentina[33] and the majority of the pregnancies were the result of rape or abuse. Pregnancy and motherhood at such an early age, in particular if unwanted, has profound consequences on the lives of girls, not least because pregnancy usually results in drop out from the education system and condemns the girls and their babies to a life of poverty and marginalization.

## F. Specific groups at risk

### 1. Indigenous women

30. While the Constitution guarantees some indigenous people's rights,[34] the Special Rapporteur received reports that indigenous women often suffered multiple forms of discrimination, including on the grounds of their status as indigenous, as women and as lower income earners. Historically they have been excluded from development opportunities in northern Argentina and face challenges in educational attainment. For example, illiteracy among the indigenous population stood at 3.8 per cent, compared with 1.9 per cent for the rest of the population.

31. Studies showed that 47.7 per cent of indigenous people in Argentina did not have access to health insurance[35] and indigenous women were discriminated against when trying to access medical services in health centres in some cities, including owing to the fact that they might not speak Spanish.[36] Many indigenous women lived in isolated rural areas far from medical centres, where public transportation was scarce and even ambulances for emergencies were not always available. For the most isolated communities, external communication might be limited to certain times of the day, and when the electricity supply was off, there was no telephone signal to communicate or report an emergency, which

[30] See, for example, the case of Belén, March 2014 in ANDHES and others, "Evaluation of compliance with the Convention on the Elimination of All Forms of Discrimination against Women in Argentina" (October 2016). Available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ARG/INT_CEDAW_NGO_ARG_25466_E.pdf.

[31] Human Rights Watch, "Argentina: Events of 2015" in *World Report 2016*. Available at https://www.hrw.org/world-report/2016/country-chapters/argentina.

[32] Human Rights Watch, "Protecting women from unsafe abortions in Argentina" (13 April 2011). Available at https://www.hrw.org/news/2011/04/13/protecting-women-unsafe-abortions-argentina.

[33] CLADEM, INSGENAR and Católicas por el Derecho a Decidir, "Evaluation on the fulfilment of the Convention on the Elimination of All Forms of Discrimination against Women" (October 2016). Available from http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ARG/INT_CEDAW_NGO_ARG_25469_E.pdf.

[34] See article 75 of the Constitution of Argentina.

[35] Verónica Raffo, "In Argentina, a road that connects the present and the past of indigenous women", blog (World Bank, November 2014). Available at http://blogs.worldbank.org/transport/argentina-road-connects-present-and-past-indigenous-women.

[36] Argentina, Bureau of Indigenous Peoples, Report (21 April 2016).

limited access to support services.[37] Poorly maintained roads and lack of public transportation hampered access to legal aid and courts.

32. Indigenous women faced serious problems in accessing justice.[38] The Special Rapporteur learned of the gang rape of a 12-year-old Wichí girl with severe developmental delay, in November 2015 in the Province of Salta. The mother of the victim had filed a report but they did not receive any legal assistance, nor were any Wichí language interpreters made available during the proceedings. In another case, a Quechua-speaking indigenous woman had been arrested for the murder of her husband and there were no indigenous language interpreters available during the proceedings, in which she alleged that she had acted in self-defence as her husband had beaten her until she was unconscious and nearly killed her.

### 2. Migrant women

33. Reportedly, more than half of the 1,805,957 migrants living in Argentina are women.[39] Migrant women were restricted to working in stereotypically female sectors subject to exploitation and irregular labour conditions. Their post-secondary or university qualifications were not recognized and self-employment was not a recognized ground for obtaining a resident permit. Access to justice to claim employment rights was a difficult process and many faced judicial officers who were prejudiced against the migrant population.[40] The lack of family ties for migrant women leads to isolation, which fosters situations of violence. Relationships formed on the basis of unequal power and a social and legal environment that does not adequately sanction gender-based violence further aggravates the situation of migrant women.[41]

### 3. Transvestites and transgender women

34. Law No. 26.743 (2012) on gender identity guarantees all persons the right to recognition of their gender identity; to the free development of their person according to their gender identity; to be identified according to their self-perceived gender identity in documents proving their identity in terms of the first name(s), image and sex recorded. A person can request to amend his or her sex and change his or her first name accordingly by filing a simple form. For persons under 18 years of age, the request must be made through his or her legal representative with his or her explicit agreement, or judicial authorization must be obtained.[42] The law guarantees access to health care, including hormonal treatment and surgical procedures for total or partial genital reassignment, if the person has health insurance coverage for these procedures. Law No. 26.618 (2010) on same-sex marriage provides for same-sex couples to have the same marital rights as heterosexual couples, including adoption and inheritance rights.[43]

35. Despite those positive legal developments, transvestites and transgender persons continued to be subjected to violence based on discrimination against persons with unconventional gender identities. Recently, there had been an increase in police persecution of individuals based on racial profiling combined with transphobia. Figures from the Public Defence Office of the City of Buenos Aires regarding District 134 showed that, in 2015, out of a total of 805 criminal charges relating to the sex trade, 543 had been brought against

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[37] ANDHES and others, "Evaluation of compliance with the Convention on the Elimination of All Forms of Discrimination against Women in Argentina" (October 2016).

[38] Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, on his visit to Argentina (forthcoming).

[39] ANDHES and others, "Evaluation of compliance with the Convention on the Elimination of All Forms of Discrimination against Women in Argentina" (October 2016), among others.

[40] Ibid.

[41] Argentina, Office of the Ombudsman of the Province of Buenos Aires, Gender Violence Observatory, *Monitoreo de Políticas Públicas y Violencia de Género 2014/2015*. Available at https://www.defensorba.org.ar/publicaciones/informe-ovg-2014-2015/download/Informe-Anual-OVG-2014-2015-Monitoreo-de-Politicas-Publicas-y-Violencia-de-Genero.pdf.

[42] Argentina, Law No. 26.743 (2012) on gender identity.

[43] Argentina, Law No. 26.618 and Decree No. 1054/10 on egalitarian marriage.

transgender Peruvians working on the streets, with no regard for their self-perceived gender identity.[44] In Argentina, transvestites and transgender women were widely associated with crimes such as selling of illegal substances or offering sex services in public, both of which were criminalized in some provinces. In Jujuy and Tucumán Provinces, for instance, arrests of transgender women were characterized by police abuse and violence.

36. In Tucumán Province, Law No. 5140 on police violations, which governs misdemeanours, continued to be implemented, even though it had been declared unconstitutional by both the national and provincial Supreme Courts of Justice. Article 19 of the Law criminalizes the behaviour of "prostitutes exhibiting themselves at the doors or windows of their houses, or strolling through the streets stopping, calling or enticing passers-by" and transgender women were disproportionally charged under that provision.

37. The Special Rapporteur received reports that Law No. 23.737 on illegal substances was one of the laws used to justify discriminatory police practices. The Protocol on conducting searches in facilities and of individuals, issued by the Ministry of Security, enabled security forces to stop and search individuals without a judicial order on the basis of their "police instinct", in violation of the Code of Criminal Procedure.[45] The police in Buenos Aires reportedly intervened on the basis of their instincts (for example, when they saw a transvestite standing in the street, climbing into or getting out of a car, talking to other people, etc.). Those arrested were charged with selling illegal substances — an offence for which no bail was allowed — based on the testimony of the arresting police officers. Data from Court No. 4 in La Plata showed that 91 per cent of transgender women and transvestites arrested had been accused of violating Law No.23.737.[46] The total number of transgender women deprived of their liberty was unknown, as that segment of the population was not always reflected in official records and they were sometimes forced to hide their identity in the face of discrimination and sexual and other forms of violence.[47]

38. The Special Rapporteur received reports that transgender women were treated by prison officers in ways that failed to respect their gender identity. Transgender persons with a self-perceived feminine identity and transvestites were usually searched by male penitentiary staff, often in the presence of several of them. In male prisons, regulations forbade items, such as female clothing and make-up, articles that enable transgender women and transvestites to express their gender identity through their physical appearance.

### 4. Women deprived of their liberty

39. The Special Rapporteur visited a detention facility for women and observed that the women were detained in relatively good conditions. Those who had children under the age of 4 were incarcerated with their children, a day-care facility was available for preschool children, and health-care facilities for children and women were in place.

40. Despite those positive observations, the Special Rapporteur was concerned that women in pretrial detention were held together with convicted women, which raised serious concerns under article 10 (2) of the International Covenant on Civil and Political Rights. Moreover, women in pretrial detention were detained based on court-issued detention orders of unlimited duration and the length of detention prior to conviction appeared, in many cases, to exceed two years. None of the women interviewed seemed to be aware of complaint mechanisms against ill-treatment or torture.

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[44] Akahatá and others, "Situación de los derechos humanos de las personas travestis y trans en la Argentina" (October 2016).

[45] Ibid., p. 8. On 4 September 2016, about 25 Peruvian and Ecuadorian transvestites and transgender women were detained during a police raid, taken to a police station, where 4 of them spent more than one week under arrest. One of them had less than 1 gram of a narcotic substance. On 12 September 2016, the Court of Appeals and Guarantees, in a decision known as the "Zambrano verdict", annulled the police procedure, considering it "degrading in the extreme".

[46] Ibid., p. 7.

[47] ANDHES and others, "Evaluation of compliance with the Convention on the Elimination of All Forms of Discrimination against Women in Argentina" (October 2016).

41. Although the Special Rapporteur only had data on the number of women in federal penitentiaries (7.03 per cent of the total inmate population, according to the Federal Penitentiary Service), she received reports that the overall number of women in detention had been increasing in the past few years.[48] Reportedly more than 50 per cent of the women deprived of their liberty were imprisoned for breach of Law No. 23.737, which governs drug trafficking, and the investigations appeared to focus on prosecuting women who were being used as "mules" to transport different illegal substances. The implementation of Law No. 23.737 at the provincial level had led to an overrepresentation of women imprisoned for that offence in the correctional services, in particular in Buenos Aires, Córdoba and Salta Provinces.

42. Many of the imprisoned women were mothers and heads of households. Although Law No. 26.472 (2009) on custodial sentences provides for the possibility of women with children to serve their sentences under house arrest, that option was underutilized.[49] The Special Rapporteur received reports that, in the Province of Buenos Aires in particular, there had been repeated cases of degrading and violent body searches of women and forced nudity in prison, and that complaints against such ill-treatment had resulted in reprisals.

#### 5. Women with disabilities

43. The Special Rapporteur received reports that women with psychosocial disabilities faced significant obstacles to accessing justice, such as the widespread practice of indefinite institutionalization in public or private mental institutions that sealed off relations with other people and limited access to complaints mechanisms; the prevalent practice of restricting the exercise of legal capacity, making it impossible to bring actions or participate in legal proceedings on their own behalf; and the prejudices of public officials who tended to doubt the credibility of their testimonies. Although Argentina had ratified the Convention on the Rights of Persons with Disabilities, in 2008, and adopted Law No. 26.657 on mental health, in 2010, those had not been fully implemented.

44. The Special Rapporteur received reports that services for victims of domestic violence were often not accessible to women with physical disabilities, shelters were not equipped to receive women in wheelchairs, and the 144 helpline could not be used by deaf women.

## IV. Incorporation and implementation of international and regional frameworks on violence against women

### A. International framework on violence against women and human rights

45. Article 75 (22) of the Constitution gives international treaties precedence over national laws and allows for their direct application by the authorities and domestic courts. Argentina has ratified the international women's rights treaty, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol and the other core United Nations treaties on human rights, namely, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, the International Covenant on Civil and Political Rights and its two Optional Protocols, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the Convention on the Rights of the Child and its three Optional Protocols, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Convention on the Rights of Persons with Disabilities and its Optional Protocol and the International Convention for the Protection of All Persons from Enforced Disappearance, as well as the multilateral

[48] Ibid. In October 2016, there were at least 3,125 women deprived of liberty; in the past 15 years, the number of women prisoners has increased by 32 per cent.

[49] Ibid.

Agreement Establishing the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean.

46. The Special Rapporteur welcomed the fact that at least three universities in Argentina had introduced gender studies and that the Ministry of Education had plans to include gender equality in the school curricula. However, she noted that there was no specific education on the Convention on the Elimination of All Forms of Discrimination against Women, nor on the general recommendations and the jurisprudence of the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the Convention, with regard to gender-based violence.

## B. Regional framework on violence and human rights

47. Argentina has also ratified the Convention of Belém do Pará, the American Convention on Human Rights, the Inter-American Convention against All Forms of Discrimination and Intolerance, the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, the Inter-American Convention on International Traffic in Minors, the Inter-American Convention on the Forced Disappearance of Persons, the Inter-American Convention on the International Return of Children, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on the Granting of Civil Rights to Women, the Inter-American Convention on the Granting of Political Rights to Women and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. Argentina has also recognized the competency of the Inter-American Court of Human Rights and Commission on Human Rights.

48. Argentina was among the countries working to integrate the Latin American Model Protocol for the investigation of gender-related killings of women,[50] which sets out guidelines for conducting an effective criminal investigation of gender-related killings, in accordance with States' international obligations, into its legal system. The Specialized Unit on Violence against Women of the Public Prosecution Office of the Nation, in collaboration with the Argentine Forensic Anthropology Team, had conducted a survey of protocols in other countries in the region and was working on systematizing the guidelines for action by public prosecution offices.

## C. United Nations monitoring mechanisms

49. In November 2016, the Committee on the Elimination of Discrimination against Women examined the periodic report of Argentina and expressed concern[51] about the persistence of discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and in society; intersecting forms of discrimination and the deep-rooted machismo culture, which underpin gender-based violence against women; sexual abuse at school and sexual harassment in the workplace; institutional, procedural and practical barriers faced by women in accessing justice; the persistence of gender-based violence against women in the private and public spheres; the increasing number of femicides; regional disparities in the provision of redress for victims; the lack of information on the accessibility of shelters for older women, women belonging to ethnic minorities, migrant and refugee women and women with disabilities; hate crimes against lesbian, bisexual, transgender and intersex persons, including reports of harassment by the police, murders of transgender women and the killing of lesbian, gay, bisexual, transgender

[50] Office of the United Nations High Commissioner for Human Rights and the United Nations Entity for Gender Equality and the Empowerment of Women, *Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide)*. Available at www.un.org/en/women/endviolence/pdf/LatinAmericanProtocolForInvestigationOfFemicide.pdf.

[51] See CEDAW/C/ARG/CO/7.

and intersex activists; and the absence of data on the number of complaints about such crimes, investigations, prosecutions and convictions of perpetrators.

50. Other United Nations treaty bodies also made recommendations on combating violence and discrimination against women.[52]

51. Relevant recommendations from the universal periodic review[53] that had been accepted by Argentina included addressing the issue of unduly protracted detentions and promoting the use of alternative measures to pretrial detention, in particular for pregnant women and young children; pursuing efforts to combat all forms of discrimination against women; ensuring redress for victims of domestic violence, as well as the prosecution of perpetrators.

# V. State responsibility and measures to address violence against women

## A. Legislative framework

52. In addition to article 75 of the Constitution, which gives international treaties precedence over national laws, article 37 provides for "actual equality of opportunities for men and women to elective and political party positions" by "means of positive actions in the regulation of political parties and in the electoral system". Article 75 (23) gives Congress the power to legislate and promote positive measures guaranteeing true equal opportunities and treatment, the full benefit and exercise of the rights recognized by the Constitution and by the international treaties on human rights that are in force, particularly with regard to children, women, the elderly and disabled persons.

53. Article 1 of Law No. 24.417 (1994) on protection against family violence defines domestic violence as physical injury or psychological abuse by a member of the victim's family group. However, under that Law, domestic violence remains a misdemeanour that is handled in civil, rather than criminal, courts. Only if the act involves a "crime against sexual integrity" is it punishable under the Criminal Code[54] by up to 20 years' imprisonment.[55]

54. Law No. 26.485 (2009) on violence against women defines domestic violence as any act by a member of the family group, regardless of where it occurs, that harms the dignity, well-being, physical, psychological, sexual or economic integrity, freedom, including reproductive freedom and the right to the full development of women. Family group means the group originating in kinship by blood or by affinity, marriage, civil union, couple or courtship, including ongoing and terminated relationships. The state of living together is not a requirement (art. 6 (a)). The Law incorporates the concept of comprehensive protection and makes reference to other forms of violence that women suffer outside the family or domestic setting.

55. The Law on violence against women coexisted with other civil and criminal laws that were not fully aligned with it or that contained contradictory provisions. For example, Law No. 26.485 proscribes mediation or negotiation in cases of gender-based violence (art. 9 (e)). However, article 6 of Law No. 13.433 on criminal mediation states that mediation may be used in cases relating to events arising for reasons of family or coexistence.[56] In addition, the national Law on violence against women was not universally implemented in

[52] See CERD/C/ARG/CO/21-23; CCPR/C/ARG/CO/5; CRPD/C/ARG/CO/1; E/C.12/ARG/CO/3; and CRC/C/ARG/CO/3-4.

[53] See A/HRC/8/34.

[54] Argentina, Criminal Code, Law No. 11.179 of 21 December 1984, last amended 19 December 2012.

[55] OECD, "Social Institutions and Gender Index: Argentina". Available at www.genderindex.org/sites/default/files/datasheets/AR.pdf.

[56] Argentina, Office of the Ombudsman of the Province of Buenos Aires, Gender Violence Observatory, *Monitoreo de Políticas Públicas y Violencia de Género 2014/2015*.

all the provinces; for example, the autonomous city of Buenos Aires applied its own law on domestic violence.

56. Article 26 of the Law on violence against women sets out urgent preventive measures and provides that, at any stage of the proceedings, the intervening judge may order one or more of the following preventive measures: prohibit the alleged perpetrator from approaching the woman's place of residence, work, study, recreation or habitual attendance; order the alleged perpetrator to cease all acts of disturbance or intimidation directly or indirectly carried out against the woman; order the immediate restitution of personal effects to the petitioner, if necessary; prohibit the alleged aggressor from buying and possessing weapons and confiscate those in his possession; provide security measures at the woman's home; order any other measures necessary to ensure the safety of the woman, to stop the situation of violence and to avoid the repetition of any act of disturbance, intimidation, aggression or mistreatment. The judge may impose more than one measure at a time and shall set the duration of the measures according to the case.

57. However, other laws were not fully in line with those provisions of the Law on violence against women. For example, article 2 of Law No. 24.417 on protection against family violence states that a judge may prohibit the perpetrator from accessing the home and the places of work or study of the victim, but makes no mention of other places, such as the homes of relatives or places of recreation, which leaves the woman vulnerable if she is somewhere that is not explicitly provided for in the law.

58. Article 32 of the Law on violence against women provides that, in the event that the perpetrator fails to comply with the measures ordered, the judge may evaluate the suitability of modifying or extending them or ordering others. In the event of a new breach by the perpetrator, the judge can apply any of the following sanctions: issue a warning to the perpetrator; inform the perpetrator's organization, institution, syndicate, professional association or workplace of his violent behaviour; order the perpetrator to undertake therapy with a view to modifying his violent behaviour. If the non-compliance consists of disobedience or another offence, the judge shall draw it to the attention of a judge with jurisdiction in criminal matters. Article 239 of the Criminal Code [17] provides for imprisonment of 15 days to one year for a person who resists or disobeys a public official in the legitimate exercise of his functions or the professional who is providing him or her with assistance, whether at his or her request or under a legal obligation. Although article 239 of the Criminal Code could be invoked as a basis for detention and prosecution of individuals violating protection orders, the violations were often interpreted by civil judges as atypical conduct rather than as a crime, so that they were neither reported nor prosecuted.

59. Despite the existence in law of a variety of preventive measures, the Special Rapporteur received numerous reports that the enforcement of protection orders was weak and that, after obtaining a protection order, victims did not receive adequate assistance from the police and were therefore revictimized.

60. The Special Rapporteur was informed that, in numerous cases, police officers refused to take reports from victims of domestic violence; victims had to report instances of violence several times before obtaining a restraining order, some cases of violence were still reported by the police as a family conflict and no lethality risk assessment was conducted; the police did not provide adequate assistance and information about shelters or restraining orders to victims of domestic violence; and investigations were halted when a victim withdrew her statement.

61. The Special Rapporteur also received reports that women often had to file several complaints for different incidents of domestic violence and initiate legal proceedings in different courts — for example, the family court, the court of justice of the peace to obtain protective measures, the criminal court for threats, injuries, attempted murder or murder — without any connection necessarily being made between the cases. Reportedly, the Supreme

[17] Argentina, Criminal Code, Law No. 11.179 of 21 December 1984, last amended 19 December 2012.

Court of Justice, following the issuance of an opinion by the Attorney General's Office,[58] had ruled that facts relating to gender-based violence between the same parties must be reviewed by a single court; however, that ruling was yet to be implemented. The President of the Supreme Court of Justice of the Province of Buenos Aires[59] issued a resolution that cases brought by the same party should be joined, but it had been interpreted in different ways with the result that cases brought by women victims were still being brought before different instances.[60] The dispersion of judicial proceedings hampered the follow-up of cases and the analysis of the problem. In addition, although there were multidisciplinary teams working to assist victims of domestic violence in many areas of the country, there was a protection gap relating to the lack of long-term integration and protection services.

62. Under the Code of Criminal Procedure,[61] prosecution for sexual offences, including rape is not conducted ex officio by the public authorities. That means that no criminal action to prosecute and punish perpetrators of rape, even in the case of a child victim, can be taken without a private action or complaint being filed by the victim. That type of regulation sends the wrong message that rape and sexual violence are private matters and not serious public concerns that require ex officio prosecution.

63. Law No. 27.210 (2015) created and regulates the work of the body of lawyers for victims of gender-based violence[62] within the Ministry of Justice and Human Rights, which provides free legal counselling. The implementation of the Law was in its initial stages and stakeholders had already raised concerns about its funding. The Ministry of Justice and Human Rights had also issued a regulation establishing Access to Justice Centres staffed with multidisciplinary teams of lawyers, psychologists and social workers, and which were intended to provide assistance to the most vulnerable communities to resolve issues relating to housing, work, social pensions and violence against women.[63]

64. The Public Prosecution Office of the City of Buenos Aires had established a system to provide assistance for accessing justice to victims, of whom 70 per cent were victims of domestic violence and 87 per cent were women. It included five specialized prosecution units entrusted with investigating domestic violence; interdisciplinary units entrusted with providing assistance to victims; registration of cases of domestic violence within its jurisdiction; mechanisms for strategic and operational coordination with key actors; inter-jurisdictional cooperation and coordination mechanisms with national and provincial judiciaries. At time of the Special Rapporteur's visit, however, the jurisdiction of the Buenos Aires office had been limited to less serious instances of domestic violence. The Public Defence Office of the City of Buenos Aires provided free legal assistance to women seeking access to social housing in order to leave violent relationships.

65. The Special Rapporteur received reports that legal aid was provided to victims by different governmental and non-governmental bodies and organizations, but that the needs were much greater than the capacity of the available services. That was particularly alarming, considering that one third of the country's population lived below the poverty line and women in impoverished communities were not only the most likely victims of violence, but also the least likely to afford legal assistance.

[58] Argentina, Supreme Court of Justice, *G., C. L. v. Lencinas Agrovalor*, CCC 667/2015/1/CS1. Available at www.mpf.gob.ar/dictamenes/2015/MGIbl/urbo/agrovalor/G_C_L_CCC_0667_2015.pdf.

[59] Argentina, Supreme Court of Justice of the Province of Buenos Aires, resolution No. 346/14.

[60] Argentina, Office of the Ombudsman of the Province of Buenos Aires, Gender Violence Observatory, *Monitoreo de Políticas Públicas y Violencia de Género 2014-2015*.

[61] Argentina, Code of Criminal Procedure, Law No. 23.984 of 21 August 21 1991, last amended 19 December 2012. Available at www.infoleg.mecon.gov.ar/infolegInternet/anexos/0-4999/638/texact.htm#:~:text=Art%C3%ADculo%201%C2%B0%2D%20Las,ejercicio%20de%20la%20acci%C3%B3n%20penal.

[62] Argentina, Law No. 27.210 (2015).

[63] See www.jus.gob.ar/accesoalajusticia.aspx.

## B. Policy framework

66. The National Women's Council had established a free helpline (144) operated by psychologists and lawyers 24 hours a day, 7 days a week, which provided advice and information on assistance available to victims of violence. The helpline received an average of 9,000 calls per month and had experienced challenges in expanding its national coverage and coordinating its services with emergency assistance services and complaint procedures. The Special Rapporteur was informed that the helpline was being expanded in cooperation with the Office of the Under-Secretary for Gender and Diversity of the Province of Buenos Aires. However, several NGOs and victims stated that the capacity of the helpline was insufficient, that it did not provide information in indigenous languages and that it was not adapted for deaf women.

67. At the time of the Special Rapporteur's visit, there were 87 State-run shelters for victims of domestic violence in Argentina, as well as several shelters operated by NGOs. The Special Rapporteur visited several of those shelters and met staff who were devoted to their work and delivering much needed assistance and services. In one province, however, there was not a single shelter in operation. The Special Rapporteur received information that there were no shelters in rural and remote areas of the country. She noted that there were only a few shelters available throughout the country for victims of trafficking.

68. In July 2016, the Government announced its National Action Plan for 2017-2019[64] with the mission to guarantee the right of every woman to a life free of violence and to achieve the implementation of Law No. 26.485 on violence against women. The Plan set out the three-year budget, of which 80 per cent was earmarked for the construction of 36 comprehensive protection homes (shelters). It comprised 69 measures and 137 actions and had been validated by 50 public institutions from all three branches of government. The Plan proposed the incorporation of a gender-based perspective at the educational level; the conducting of mass awareness-raising campaigns to increase the profile of the emergency helpline (144) for victims; and increased spending on women's rights initiatives in various government agencies. Stakeholders had raised concerns that information about the resources provided by the various national ministries involved in the Plan was not available and it was not clear whether the budget would be sufficient to ensure financing of the activities included in the Plan.[65]

## C. Institutional framework: national machinery and independent institutions

69. The National Women's Council is the governing body responsible for developing public policies on prevention, punishment and eradication of violence against women. The strategic priorities of the Council include eradication of all forms of violence against women and girls; economic empowerment and promotion of the autonomy of women; political empowerment, participation and equality for women in all areas of decision-making. The Council worked in the areas of gender violence, women and health, employment, communication and politics[66] and had important responsibilities regarding the implementation of Law No. 26.485.

70. The Special Rapporteur welcomed the Council's efforts to promote and monitor the implementation of the State's international obligations relating to gender equality and violence against women and to coordinate its work with that of the provincial and municipal Women's Offices with a view to implementing national plans in the area of gender equality and the 2017-2019 National Action Plan. She was, however, concerned

[64] Argentina, Plan Nacional de Acción para la Prevención, Asistencia y Erradicación de la Violencia Contra las Mujeres 2017-2019. Available at https://www.argentina.gob.ar/sites/default/files/consejo_nacional_de_mujeres_plan_nacional_de_accion_contra_violencia_genero_2017_2019.pdf.

[65] ANDHES and others, "Evaluation of compliance with the Convention on the Elimination of All Forms of Discrimination against Women in Argentina" (October 2016).

[66] See www.cnm.gov.ar/.

about the lack of systematic and institutionalized coordination between the federal and provincial governments, in particular with regard to the work of the Council and the provincial and municipal offices in areas relating specifically to women across the country.

71. The Ministry of Justice and Human Rights assists the President of the Republic and the Chief of Cabinet in their functions and relations with the judiciary, the National Ombudsman and the Council of Magistrates, and in updating national legislation. The Ministry provides legal advice and coordinates government activities relating to human rights. In 2011, the Ministry created the National Coordinating Commission for Actions for the Elaboration of Sanctions against Gender Violence with the objective of implementing, in conjunction with other national mechanisms, the provinces, municipalities and social organizations, action relating to the development of sanctions against gender violence. The Commission also develops assessment programmes necessary for the implementation of Law No. 26.485.[67]

72. The national human rights institution in Argentina is the Office of the National Public Defender (Ombudsman), an independent institution with full functional autonomy, which has been accredited with "A" status by the Global Alliance of National Human Rights Institutions.[68] However, Argentina has not had an Ombudsman since 2009.

73. In accordance with Law No. 27.149 (2015), the National Public Defence Office is an institution for the defence and protection of human rights, which guarantees access to justice and comprehensive legal assistance in individual and collective cases in accordance with the principles, functions and provisions established in the Law. It promotes all measures for protecting and defending the fundamental rights of individuals, especially those who are vulnerable situations.

74. The Domestic Violence Office was created in 2006 by the Supreme Court of Justice with the aim of facilitating access to justice for people who have been affected by domestic violence and are in especially vulnerable situations. Several other institutions, notably the Ministries of Justice, Health, Education and Security, and the Public Prosecution Office of the Nation had responsibilities relating to combating violence against women at both the federal and the provincial levels in Argentina.

# VI. Conclusions and recommendations

75. **The Special Rapporteur acknowledges the current political will of the Government and all stakeholders, especially non-governmental organizations, to improve legislation and policies on preventing violence, provide services to victims in a holistic and coordinated manner and prosecute perpetrators. However, despite the adoption of progressive laws and policies to address gender-based violence and the constitutional provision regarding the predominance and direct applicability of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention of Belém do Pará, gender-based violence, including femicide, continues to violate women's human rights owing to a systemic and overarching shortcoming — the lack of systematic and uniform incorporation and implementation of international, regional and national standards and policies in the 2017-2019 National Action Plan on women's rights and violence against women.**

76. **The Special Rapporteur points out that violence against women is rooted in inequalities and discrimination against women. Her visit to Argentina was conducted at almost the same time as the examination of the seventh periodic report of Argentina by the Committee on the Elimination of Discrimination against Women, which provided an excellent opportunity for the Government and other stakeholders to situate prevention and elimination of violence against women into the broader context of elimination of different forms of discrimination against women, as recommended by the Committee. The Special Rapporteur's recommendations are focused on causes**

[67] See www.jus.gob.ar/areas-tematicas/violencia-de-genero.aspx.

[68] See www.ohchr.org/Documents/Countries/NHRI/Chart_Status_Nls.pdf.

and consequences and the elimination of violence against women and, as such, they interconnect with and complement the recommendations of the Committee. The Special Rapporteur looks forward to continuing a fruitful dialogue with the Government and other stakeholders on the implementation of the action-oriented recommendations made in the present report.

Incorporation and direct application of international and regional standards

77. The Special Rapporteur recommends that the Government:

(a) Address the lack of systematic and uniform incorporation and direct application of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention of Belém do Pará at the federal and provincial levels, as provided for under article 75 of Constitution, and take measures to fully incorporate those standards into all levels of its legal system by harmonizing its laws accordingly;

(b) Harmonize relevant legislation at the provincial level in the areas of criminal law, criminal procedure law, health, education and other areas relating to women's rights and violence against women with the Convention on the Elimination of All Forms of Discrimination against Women and the Convention of Belém do Pará;

(c) Accelerate the incorporation and implementation of the Latin American Model Protocol for the investigation of gender-related killings of women;

(d) Provide appropriate awareness-raising and training programmes on women's rights for government officials, members of the legislative bodies, the judiciary, lawyers, law enforcement officers, social and health workers, teachers and the general public in order to ensure that the Convention on the Elimination of All Forms of Discrimination against Women and the Convention of Belém do Pará are directly applied at the domestic level and that laws are applied in accordance with international standards;

(e) Encourage universities to introduce, along with the gender studies programmes, specific education on the Convention on the Elimination of All Forms of Discrimination against Women, the general recommendations of the Committee on the Elimination of Discrimination against Women and its jurisprudence under the Optional Protocol to the Convention, the Convention of Belém do Pará and relevant jurisprudence of the Inter-American Court of Human Rights.

Uniform implementation of Law No. 26.485 on violence against women at all levels

78. The Special Rapporteur recommends that the Government:

(a) Ensure endorsement and effective implementation by all provinces of Law No. 26.485 on violence against women;

(b) Ensure compliance of all civil and criminal legislation at the federal and provincial levels with the Law on violence against women so as to eliminate contradictory provisions (see para. 55 above).

National mechanism or coordinating body on violence against women

79. The Special Rapporteur recommends that the Government:

(a) Consider giving the National Women's Council ministerial rank in order to make it more visible and enhance its capacity to promote and monitor the implementation of policies on gender equality and on the elimination of violence against women at the federal and provincial levels;

(b) Strengthen the coordinating role of the National Women's Council and provide it with adequate budgetary and human resources for implementing, monitoring and evaluating the 2017-2019 National Action Plan.

Awareness-raising campaigns to overcome the machismo culture and discriminatory stereotypes

80. **The Special Rapporteur recommends that the Government:**

(a) **Adopt a comprehensive strategy targeting women, men, girls and boys to overcome the machismo culture and discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and in society;**

(b) **Continue systematic efforts to raise awareness about the different forms of violence against women, in cooperation with civil society.**

**Office of the National Ombudsman**

81. **The Special Rapporteur recommends that the Government:**

(a) **Appoint an ombudsman immediately;**

(b) **Provide adequate financial resources to the Office of the Ombudsman to enable it to fully comply with its mandate, especially with respect to its work on violence against women and the femicide observatory;**

(c) **Encourage all relevant institutions to support and cooperate with the Ombudsman and the femicide observatory.**

**Collection of data on femicide and other forms of violence against women**

82. **The Special Rapporteur recommends that the Government:**

(a) **Establish or support femicide observatories or watches in all provinces, tasked with collecting data on all cases of femicide or gender-related killing of women and analysing each case in order to identify any protection failures with a view to improving and developing further preventive measures;**

(b) **Collect and publish disaggregated data at the federal and provincial levels on all forms of violence against women, including transvestites, transgender women, women with disabilities, indigenous women and migrant women, with particular focus on femicide;**

(c) **Conduct regular surveys to assess the prevalence and trends of different forms of violence against women, including sexual harassment.**

83. **The Special Rapporteur recommends that the Government revise the Criminal Code to provide for ex officio prosecution for all acts of violence against women so that investigations into or prosecution for such offences shall not be dependent upon a report or complaint filed by the victim and for proceedings to continue even if the victim withdraws her or his statement or complaint.**

84. **The Special Rapporteur recommends that the federal and provincial governments, in particular the Ministries of Education and Health, provide adequate funding for the implementation of Law No. 26.150 on the National Programme for Comprehensive Sex Education and:**

(a) **Include sexual and reproductive health education in the curricula of all schools throughout the country;**

(b) **Intensify efforts to distribute contraceptives free of charge, in particular in informal settlements and low-income areas.**

**Reducing maternal mortality by, inter alia, ensuring access to safe legal abortions and post-abortion services for women and girls**

85. **The Special Rapporteur recommends that:**

(a) **In the short term, as a matter of urgency, the provincial authorities should adopt the necessary protocols regulating legal abortions in line with the current Criminal Code and the Supreme Court interpretation on the matter, and in line with general recommendation No. 24 (1999) on women and health of the Committee on the Elimination of Discrimination against Women;**

(b) **The punitive measures criminalizing women who undergo abortions be removed and a law regulating legal abortions be adopted, at least for pregnancies**

**resulting from rape or incest; pregnancies in which the life or health of the pregnant woman is at risk; pregnancies in which there is severe foetal impairment;**

**(c) Strict justification requirements be defined and applied to prevent the blanket evocation of conscientious objection by medical practitioners refusing to perform abortions;**

**(d) The federal and provincial Ministries of Health collect and disseminate information regarding public health facilities that provide access to safe legal abortions and post-abortion services.**

**Legislative and other measures**

86. **The Special Rapporteur recommends that the Government:**

**(a) Harmonize the definition of rape with international standards and increase the age of sexual consent;**

**(b) Amend procedural legislation to ensure that the statute of limitation for initiating legal proceedings in relation to gender-based violence offences, including rape, covers a period of time that is sufficient and commensurate with the gravity of the offence and allows for the initiation of proceedings after the victim has reached the age of majority;**

**(c) In cases of femicide, adopt additional measures in relation to perpetrators, such as withdrawal of their parental rights;**

**(d) Take legislative or other measures necessary to ensure that investigations and judicial proceedings in relation to all forms of gender-based violence are carried out without undue delay, taking into consideration the rights of the victim during all stages of the proceedings;**

**(e) Make available information on legal remedies to women victims of gender-based violence, including in indigenous languages and in formats accessible by women with disabilities;**

**(f) Ensure that the body of lawyers for victims of gender-based violence and the specialized units of the Access to Justice Agencies[69] of the Public Prosecution Office provide free legal aid services to all women who do not have sufficient means, including interpretation for indigenous women and deaf women;**

**(g) Amend all laws that provide for mandatory participation of both parties in dispute resolution processes, including mediation, to exclude such processes in cases of violence against women and ensure that judges are trained to identify such cases.**

87. **The Special Rapporteur recommends that the Government ensure that, in all places of detention, accused women are segregated from convicted women and are subject to separate treatment appropriate to their status as non-convicted persons; limit the use of pretrial detention, in particular of pregnant women and women with young children, including by expanding recourse to precautionary measures; accelerate the implementation of Law No. 26.472 on custodial sentences; provide alternatives to detention for girls under the age of 18, pregnant women and mothers with young children, taking into account the best interest of the child.**

**Investigation, prosecution, support services and protective measures**

88. **The Special Rapporteur recommends that the Government:**

**(a) Put in place guidelines for prompt and efficient investigation of gender-based violence, integrating risk assessment and risk management by duly trained personnel under specific protocols and with adequate technical resources;**

**(b) Expand and further improve the 24/7 national helpline (144) for victims of violence; provide it with adequate staff and funding to enable it to cover all**

[69] *Agencias Territoriales de Acceso a la Justicia.*

**provinces and to cooperate, connect and work with provincial helplines to provide assistance to all victims, including those in remote locations and speakers of indigenous languages.**

**(c) Align provincial legislation with federal legislation; enforce protection measures in a uniform manner; encourage judges and law enforcement officials to consider failure to comply with a preventive order as being equivalent to disobeying a public official in the legitimate exercise of his functions and an offence under article 239 of the Criminal Code, and report and prosecute it accordingly.**

**(d) Urgently assess the need for shelters and ensure that sufficient safe shelters, funded by the State or the provinces, are available in every province and easily accessible by all, including older women, indigenous women, migrant women, refugee women and women with disabilities.**

United Nations A/HRC/35/30/Add.4

General Assembly

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**Human Rights Council**
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**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

# Report of the Special Rapporteur on violence against women, its causes and consequences to Argentina: comments by the State

## Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur on Violence against women, its causes and consequences to Argentina.

GE.17-08151(E)
*1708151*

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# Report of the Special Rapporteur on violence against women, its causes and consequences to Argentina: comments by the State*

## Response to recommendations

1. Regarding official data on the number of women in detention: the Federal Penitentiary Service reports that by 2016 740 women (representing 7.03% of the total inmate population) were detained in federal prisons in Argentina[1].

2. The number of State-run shelters by November 2016 was 87 not 25[2]

3. Although there was document named "National Action Plan 2014-2016 presented by the former administration in November 2015, such document was not an action plan given the lack of budget allocated, log frame matrix and policy lines defined. In addition, footnote number 67 refers to the current National Action Plan 2017-2016

4. Additional information and comments

5. III. Manifestations of violence against women, its causes and consequences

6. F. Specific groups at risk

7. 3. Transvestites and trans-women

8. On March 2016 a special Protocol for providing medical attention to transvestites and trans women in prisons was validated nation-wide3 to ensure respectful attention and respect for gender diversity.

9. On 28 July 2016, the National Secretary of Human Rights launched the first national working group on gender diversity. As a result of this initiative all 24 provincial Goverments in Argentina have created and/or stablished special units within their administrations to address issues realted to guaranteeing human righs for the LGBTII community

10. V State responsibilities and measures to address violence against women

11. B Policy framework

12. The National Action Plan 2017-2019 is the first of its kind in Argentina, it comprises 69 measures and 137 action and it has been validated by 50 public institutions from the three governmental branches.

13. Comentarios sobre el punto 87 de las recomendaciones de la relatora Dubravka Simonovic: "Proveer los fondos necesarios para la implementación de la Ley Nacional 26.150 de Educación Sexual Integral"

14. Con respecto al punto a. Incluir la educación sexual y reproductiva en la currícula de todas las escuelas del país:

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1 For more information please refer to http://www.spf.gob.ar/www/estadisticas2/catcms/84/Situacion-legal-genero-y-grupo-etario

2 For detailed information on the distribution of the shelters, please refer to Anex I

3 Protocol available at http://www.mpd.gov.ar/pdf/4.%20Acta%20y%20gu%C3%ADa%20definitiva.pdf

15. Cabe aclarar que desde el año 2008 existen Lineamientos Curriculares de Educación Sexual Integral, aprobados por el Consejo Federal de Educación. Estos establecen los contenidos a enseñar en todos los niveles y modalidades educativas. Las diferentes jurisdicciones del país toman este documento como referencia para la incorporación de los lineamientos de ESI en sus propios diseños curriculares.

16. En la escuela secundaria, muchas de las jurisdicciones, trabajan no solo su inclusión en formato transversal, sino también con enlaces con las distintas materias que conforman la estructura curricular. Esto permite un trabajo participativo de los docentes comprometidos con los temas que son relevantes para los estudiantes.

17. Es importante destacar que se realiza capacitación a los docentes, de las jurisdicciones, en pos de intensificar los lineamientos de ESI.

18. Es importante aclarar que durante el año 2016 el Ministerio de Educación y Deportes de la Nación, a través de sus equipos técnicos, publicaron la Cartilla sobre Violencia de Genero ( Ley N° 27234), la misma fue enviada a todas las jurisdicciones para que pueda llevarse a cabo las jornadas de Educar en Igualdad: prevención y erradicación de la violencia de genero.

19. La misma contaba con distintas actividades para todos los niveles del SEN. Se ha documentado la recolección de materiales de las distintas jurisdicciones sobre esta Jornada donde no solo participaron los alumnos y docentes sino también la Comunidad Educativa.

20. Sobre el punto b. Intensificar los esfuerzos para entregar anticonceptivos gratis, en particular en asentamientos iriformales y áreas de bajos recursos:

21. Es preciso comentar que dicha recomendación corresponde al área de Salud. Específicamente, en el

22. Ministerio de Salud de la Nación existe el Programa Nacional de Salud sexual y procreación responsable,que tiene entre sus competencias la distribución de métodos anticonceptivos gratis.

23. Comentario general: Si bien la implementación de la Educación Sexual Integral viene desarrollándose en nuestro país desde la creación de la Ley 26.150, se hace preciso seguir acompañando este proceso en las instituciones educativas con materiales de apoyo e instancias de formación docente inicial y continua, ya que la ESI requiere de cambios culturales profundos y paulatinos.

24. III. Manifestaciones de violencia contra las mujeres, sus causas y consecuencias

25. A. Femicidios

26. 12. ...durante septiembre y octubre de 2015, 3 mujeres trans fueron asesinadas brutalmente, todas ellas eran lideres o activistas LGTBI. Para fines de 2015, nadie había sido imputado/procesado por estas muertes. En 2013, hubieron 19 homicidios de personas trans denunciados por el proyecto "Trans Murder Monitoring (TMM)".

27. En este punto, se debe advertir que se omite mencionar el homicidio de Diana Sacayán, ocurrido en octubre de 2015, investigación en la que además sí se obtuvieron avances. Dos de los presuntos responsables se encuentran procesados. El 11 de noviembre de 2016, el entonces titular de la Fiscalía de Instrucción N°4, Matías Di Lello, y la titular de la UFEM, Mariela Labozzetta, requirieron parcialmente la elevación a juicio del caso por uno de los acusados, por entender que estaban reunidos los elementos de prueba suficientes para someterlo a debate por su intervención en el crimen. A la vez, con fecha 23 de diciembre de 2016, la Cámara Nacional de Apelaciones hizo lugar al pedido del Ministerio Público Fiscal para profundizar la investigación respecto del segundo acusado.

28. El femicidio de Diana Sacayán, activista por los derechos LGTBI, constituye uno de los casos de violencia de género que más repercusión social tuvo en los últimos tiempos. El hecho produjo un fuerte impacto en los movimientos y la comunidad LGBTI en Argentina. Autoridades y organizaciones locales y organismos internacionales repudiaron el hecho y solicitaron una pronta investigación. La actuación articulada de distintas dependencias del Ministerio Público Fiscal: la fiscalía interviniente, la Unidad Fiscal Especializada en Violencia contra las Mujeres del (UFEM) y la Dirección General de Orientación, Acompañamiento y Protección de Víctimas (DOVIC), permitió el rápido esclarecimiento del hecho y la detención de los presuntos responsables.

29. En tal sentido, la investigación del MPF se ajustó al estándar de debida diligencia reforzada emergente de los instrumentos internacionales de derechos humanos ratificados por el Estado argentino para los casos de femicidios y crímenes de odio por género. Personal capacitado en violencia de género colaboró en las entrevistas a los testigos y la recolección de otros elementos probatorios, aportando una perspectiva integral sobre el fenómeno y asegurando una actuación libre de estereotipos. En noviembre de 2015, el juez de instrucción dictó el procesamiento con prisión preventiva a los dos acusados, como coautores del homicidio de una mujer mediando violencia de género —femicidio, tipificado en el art. 80 inc. 11, del Código Penal, incorporado por la ley nº 26.781—. Se trata el primer precedente en que se aplica esa figura legal al homicidio de una mujer trans[5].

30. V. Responsabilidad estatal y medidas para enfrentar la violencia de género

31. A. Marco legal

32. 62. La Procuración General de la provincia de Buenos Aires emitió una resolución para unificar casos denunciados por la misma víctima, pero ha sido interpretada de diferente modo, y como resultado de ellos los casos siguen siendo sustanciados por diferentes unidades fiscales….

33. En este punto, correspondería agregar que recientemente la Corte Suprema de Justicia de la Nación (CSJN) —siguiendo el dictamen presentado sobre este tema por la Procuración General de la Nación— ha resuelto que los hechos constitutivos de un mismo conflicto de violencia de género deben ser juzgados por un único tribunal[6]. Esta jurisprudencia, relevante no sólo para la provincia de Buenos Aires sino para todo el país, establece que la unificación de causas es la solución que mejor se compatibiliza con el deber estatal de garantizar una tutela judicial efectiva en casos de violencia de género[7].

34. el Ministerio Público Fiscal de CABA ha establecido un sistema para brindar acceso a la justicia y asistencia a la víctima… lo que incluye: 5 fiscalía especializadas en violencia doméstica; unidad interdisciplinarias de asistencia a la víctima; registro de casos de violencia doméstica en la jurisdicción…

35. En este punto sólo se menciona al Ministerio Público Fiscal de la Ciudad, y no así al Ministerio Público Fiscal de la Nación que también ha creado en 2012 un Programa sobre

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[5] Para más información sobre la actuación del MPF en la investigación del femicidio de Diana Sacayán, ver: http://www.fiscales.gob.ar/wp-content/uploads/2016/02/Informe-CIDH-caso-Sacayan.pdf. Asimismo, ver http://www.fiscales.gob.ar/genero/travesticidio-de-diana-sacayan-la-camara-de-apelaciones-hizo-lugar-al-pedido-del ministerio-publico-fiscal-para-profundizar-la-investigacion-respecto-de-uno-de-los-acusados/

[6] Fallo completo disponible en http://sjconsulta.csjn.gov.ar/sjconsulta/documentos/verDocumentoById.html?idDocumento=7304372

[7] "G., C. L. s/ Lesiones Agravadas" – CCC 667/2015/1/CS1. Dictamen completo disponible en http://www.mpf.gob.ar/dictamenes/2015/AGilsCarbo/septiembre/G_C_L_CCC_6667_2015.pdf

Políticas de Género (actual Dirección General de Políticas de Género) que tuvo como misión principal transversalizar el enfoque de género en el organismo; en 2014 una Dirección General de Acompañamiento, Orientación y Protección a las Víctimas (DOVIC), y en 2015 una Unidad Fiscal especializada en violencia contra las Mujeres (UFEM)[8], con funciones y competencias específicas en materia de violencia de género.

36. La Dirección General de Políticas de Género (DGPG) se creó con el objetivo de incorporar la perspectiva de género a las políticas del organismo. Durante los tres primeros años de funcionamiento y hasta la creación de la UFEM, tuvo un rol fundamental en la intervención en causas judiciales de violencia de género. A partir del año 2015, entre sus funciones principales se encuentran el diseño y ejecución de programas de capacitación en temas vinculados a los derechos de las mujeres y prevención e investigación de la violencia de género. Asimismo, junto con la Dirección de Acceso a la Justicia (ATAJO) desarrolla proyectos de prevención de la violencia como la creación de la Red de Promotoras Territoriales en Género (Red Pro.Te.Ge. Derechos), que funciona en el Barrio Carlos Mugica (Villa 31 y 31 bis), y tiene por objetivo proporcionar herramientas teóricas y prácticas a un grupo de mujeres, reconocidas como referentes barriales, para asistir a sus vecinas ante eventuales situaciones de violencia. Por otra parte, lleva adelante Grupos de acompañamiento a mujeres en situación de violencia, que funcionan con una frecuencia semanal en las Villas 21-24 y 31 y 31 bis de la Ciudad de Buenos Aires.

37. Por su parte, la DOVIC[9] tiene como funciones acompañar, orientar, proteger y brindar información general a las víctimas de delitos y promover un abordaje interdisciplinario con las derivaciones necesarias para garantizar una asistencia técnica oportuna y efectiva. Entre otros, cuenta con tres Programas especiales: el Programa de Atención de Víctimas de Violencia de Género, el de Atención de Víctimas de Trata y Explotación de Personas (que alcanza a las mujeres víctimas de explotación sexual) y el de Atención de Niñas/os y Adolescentes Víctimas de Maltrato y Abuso Sexual.

38. La UFEM fue creada en 2015 con la misión de reforzar la actuación del MPF en materia de prevención, investigación, sanción y erradicación de la violencia de género. Sus objetivos son: elevar los niveles de eficacia de las/os fiscales en sus intervenciones frente al fenómeno de la violencia de género; visibilizar ante las y los operadoras/es el carácter estructural de la problemática; y asegurar que la actuación del organismo se ajuste a los compromisos internacionales asumidos por el Estado y a las leyes de protección integral de la legislación nacional. La UFEM entiende prioritariamente en casos de muertes violentas por razones de género de mujeres, niñas y niños; crímenes de odio por razones de género, orientación sexual e identidad de género —incluyendo aquellos cometidos en grado de tentativa— y abusos sexuales agravados de personas mayores de 13 años. Cuenta con tres áreas: el Área de Litigio Estratégico, el Área de Política Criminal y el Área de Análisis Criminal y Planificación.

39. Asimismo, existen otras estructuras del MPF con competencia en prevención, sanción y erradicación de la violencia de género como la Procuraduría de Trata y Explotación de Personas (PROTEX)[10], que asiste en el diseño de la política criminal del

[8] Resolución PGN N° 1960/15. Texto disponible en http://www.mpf.gov.ar/resoluciones/pgn/2015/PGN-1960-2015-001.pdf. Asimismo, ver reglamentación de la UFM aprobada por Resolución PGN N° 427/16. Texto disponible en http://www.mpf.gov.ar/resoluciones/pgn/2016/PGN-0427-2016-001.pdf.

[9] Resolución PGN N° 1105/14. Texto completo disponible en http://www.fiscales.gob.ar/procuracion-general/wp-content/uploads/sites/9/2014/06/PGN-1105-2014-001.pdf

[10] Resolución PGN N° 805/13. Texto completo disponible en http://www.mpf.gob.ar/protex/files/2016/03/PGN-0805-2013-001.pdf.

organismo en la materia y presta apoyo a las fiscalías de todo el país en el trámite de las causas por este tipo de hechos.

40. Por último, sobre este punto es preciso aclarar que la mayoría de estas estructuras del Ministerio Público Fiscal fueron receptadas por la nueva Ley Orgánica del Ministerio Público Fiscal (n° 27.148) sancionada en junio de 2015[11]

41. C. Marco institucional

42. 71 a 76. El informe se refiere a los principales organismos gubernamentales encargados de implementar políticas de prevención, sanción y erradicación de la violencia de género. Así, menciona al Consejo Nacional de la Mujeres; al Ministerio de Justicia y Derechos Humanos; al Defensor del Pueblo de la Nación; al Ministerio Público de la Defensa de la Nación; y a la Oficina de Violencia Doméstica (OVD).

43. Sin embargo, no se incluye a las áreas específicas del Ministerio Público Fiscal de la Nación, como la Unidad Fiscal Especializada en Violencia contra las Mujeres (UFEM) y la Dirección General de Políticas de Género cuyas misiones y objetivos fueron descriptos anteriormente.

44. VI. Conclusiones y recomendaciones

45. 79. El informe propone la Incorporación y aplicación directa de los estándares internacionales y regionales

46. En particular en el punto (c) Acelerar la incorporación y la implementación del Modelo de protocolo latinoamericano de investigación de las muertes violentas de mujeres por razones de género.

47. La UFEM, con la colaboración del Equipo Argentino de Antropología Forense, está trabajando en la adaptación al ámbito local del Modelo de Protocolo Latinoamericano de investigación de muertes violentas de mujeres por razones de género (femicidio/feminicidio), elaborado por la Oficina Regional para América Central de ACNUDH y ONU Mujeres. El proyecto implicó un amplio relevamiento de los protocolos existentes en otros países de la región y la sistematización de las guías de actuación del Ministerio Público Fiscal de la Nación afines a la materia. En noviembre de 2016, UFEM recibió la misión de expertos de ONU Mujeres Brasil y ACNUDH Panamá. Actualmente, ya se cuenta con una versión preliminar del documento, que será validado por fiscales y representantes de ONU. Se espera su publicación en junio de este año.

48. Además, la UFEM coordinó la convocatoria al Curso de Autoformación virtual sobre el Modelo de Protocolo Latinoamericano de investigación de muertes violentas de mujeres por razones de género (femicidio/feminicidio), desarrollado por ACNUDH y PNUD. En esa capacitación participarán 80 integrantes del ministerio público fiscal, de los poderes judiciales a nivel local y nacional, y de las áreas especializadas del poder ejecutivo nacional.

49. Por otro parte, la UFEM y la Dirección General de Políticas de Género con la colaboración de la DOVIC y fiscales penales nacionales elaboraron una "Guía de actuación en casos de violencia doméstica contra las mujeres" aprobado por la Procuradora General de la Nación en noviembre de 2016. El documento tuvo como antecedente el Protocolo Regional para la Investigación con Perspectiva de Género de los Delitos contra las Mujeres

[11] Art. 22 inc. f) y art. 33 incs. a) y d) de la Ley N° 27.148. La UFEM fue creada en virtud del art. 32 de la ley 27.148 que dispone que "El Procurador General de la Nación podrá crear unidades fiscales especializadas con el objeto de investigar y abordar fenómenos generales que por su trascendencia pública o institucional o razones de especialización o eficiencia así lo requieran".

cometidos en el Ámbito Intrafamiliar aprobado por la Asociación Iberoamericana de Ministerios Públicos (AIAMP). El objetivo de la guía, que incorpora los estándares internacionales y regionales en materia de violencia de género, es promover pautas de actuación común para la investigación de los delitos cometidos en el ámbito doméstico con perspectiva de género. Durante este año, está prevista una capacitación destinada al personal de las fiscalías penales nacionales.

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# Report of the Special Rapporteur on violence against women, its causes and consequences on her visit to Israel: comments by the State of Israel

## Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur on Violence against women, its causes and consequences in her visit to Israel.

GE.17-09652(E)
*1709652*

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# Report of the Special Rapporteur on violence against women, its causes and consequences on her visit to Israel: comments by the State of Israel*

## Response to recommendations

1. Israel invited the Special Rapporteur on Violence against Women (SRVAW) to conduct a country visit to Israel with the understanding that her report would focus on the situation of women in Israel. However, as is clearly stated from the beginning of the report till its end, the SRVAW frames her visit to Israel "… in a general context of protracted and prolonged occupation punctuated by frequent incidents of violence and absence of any prospect of peace that creates a growing despair and hopelessness among the population. "(page 3, paragraph 6).

2. Although the SRVAW prepared a separate report on her visit to the Palestinian Authority, the report on Israel, rather than analyzing the situation of women in Israel, places a disproportional focus on the conflict between Israel and the Palestinians. The report is framed almost entirely in terms of the Israeli-Palestinian conflict, completely overshadowing many other key factors that influence gender based violence (GBV), such as socioeconomic, religious, cultural etc.

3. Even when addressing the conflict and its potential effects on GBT, the report fails to show a clear causal relation between the situation of Palestinian women and the conflict, or to provide any information that shows a difference between their situation and that of women from a similar cultural and social background.

4. The recurring term of "gendered impacts" of the occupation/conflict remains extremely vague. It provides no evidence or explanation for many of the claims, and serves as a shaky base for some far-reaching conclusions about Israel's alleged responsibility for the violence Palestinian women suffer in the hands of other Palestinians.

5. The report fails to demonstrate how policies governing Israel's administration of the Territories have any particular relevance to the question of violence against woman (VAW) as such. Rather, it adopts an overly broad interpretation of realities on the ground, that sees any potential impact on human rights (be it the right to adequate housing, education, health) as affecting women in particular, and as worth mentioning in a report dealing with VAW. This again raises doubts as to the soundness of the process that led to this report.

6. Moreover, while putting a disproportional focus on the conflict, it ignores completely the effects that the conflict has over Israeli women and girls. In fact, the only reference to the negative impact of the conflict on Israeli women is that, in order to thwart terror attacks, Israeli security guards are allowed to keep their weapons at home.

7. There is no reference to many female victims of Palestinian incitement and terror, including women and girls who were wounded or murdered by Palestinian terrorists in acts of stabbing, shooting, rocket firing, stone throwing, car ramming, etc.

8. Some recent examples include the cruel and violent murder of a mother by a Palestinian minor on the doorsteps of her own home, in front of her own children; the murder of a 13 year-old Israeli girl by a Palestinian terrorist while she was asleep in her bed; the stabbing of a pregnant Israeli woman by a Palestinian; the murder of a young Israeli woman who was taking a stroll in her neighborhood

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9. Unfortunately, this report continues with the same language familiar from previous reports which focus on condemnation of Israel. This is unfortunate as, in doing so, this report has missed an opportunity to encourage the relevant Israeli authorities to take meaningful action in order to improve the situation of women in Israel. By choosing to do so, the SRVAW has given preference to the anti-Israel agenda of the HRC rather than focusing on the best interests of women.

10. In summary, while the special mandate on VAW is thematic in nature, the report on Israel aligns itself with the biased anti-Israel political agenda of the Human Rights Council, and the myriad reports previously prepared by the OHCHR on numerous issues related to the conflict. Regrettably, tainting this report with the biased political agenda of the HRC against Israel will not help women who are victims of GBV, whether Israeli or Palestinian.

11. The fact that the SRVAW has politicized an independent and professional thematic report is not only disappointing but also very troubling. It raises concerns over the credibility and impartiality of the OHCHR and of the UNHRC special procedures.